

November 9, 2010

MEMORANDUM

SUBJECT: Clarification on Watershed Implementation Plans and 2-Year Milestones

FROM: Jon M. Capacasa, Director, Water Protection Division, EPA Region III

TO: Shawn M. Garvin, Regional Administrator
and Chair, Principals Staff Committee

This memorandum provides clarification on the following items raised by the Chesapeake Bay Program Principals' Staff Committee and Water Quality Goal Implementation Team during the latter part of October 2010:

- Information on future 2-year milestones in the Phase I Watershed Implementation Plans (WIPs);
- Reporting and assessment of 2-year milestones;
- Exchange of allocations across nutrients and/or major basins;
- 5% temporary reserve; and
- November 12 deadline for submitting final WIP input deck and document revisions in order to receive feedback and get model results prior to November 29.

Information on Future 2-Year Milestones in Phase I WIPs

EPA expects the Phase I WIPs to explain what actions will be taken to control nutrients and sediments, and when these controls will be implemented. EPA will use this information as a basis for 1) demonstrating reasonable assurance that allocations will be achieved and maintained; and 2) evaluating whether future 2-year milestones are on schedule to have all nutrient and sediment controls in place by 2025 to meet allocations, and controls by 2017 that would achieve 60% of the necessary nutrient and sediment reductions.

As stated in EPA's November 4, 2009 letter to the PSC and the April 2, 2010 *Guide for EPA's Evaluation of Phase I Watershed Implementation Plans*, EPA recognizes that the pace at which jurisdictions implement nutrient and sediment controls could vary (see Figure B2 from the November 4, 2009 letter, which is included as an enclosure to this memorandum). Some jurisdictions may implement more attainable controls upfront, resulting in greater nutrient and sediment reductions in the near-term and a slower reduction rate in the future as more difficult practices are implemented. Conversely, jurisdictions may engage in upfront capacity-building, such as passing new legislation or increasing resources for incentive-based programs, which results in fewer on-the-ground controls in the near-term but enables accelerated future implementation.

In order for EPA to understand the restoration pace proposed by each jurisdiction, EPA expects the Phase I WIP to identify the estimated load reductions, but not necessarily the specific practices, that the jurisdiction will achieve in each of its major basins every two years, starting in 2011. The yellow cells in Table B2 of the November 4, 2009 letter

represents the nutrient and sediment reduction schedule, by major basin, that EPA expects jurisdictions to include in their Phase I WIP. Unlike the 2017 interim targets and 2025 allocations, EPA does not expect jurisdictions to break out 2-year load reduction schedules **by sector** in the final Phase I WIP. EPA also does not expect the jurisdiction to submit an input deck for each 2-year milestone **as part of its Phase I WIP**. Rather, EPA will expect detailed information on the timing and location of specific pollution reduction practices, including an input deck, when the jurisdiction submits its commitments **for the next 2-year milestone period** (next period starts January 2012).

Two-year load reduction schedules included in the Phase I WIP should be consistent with the dates for capacity building strategies described in the WIP document (see Figure B4 from the November 4, 2009 letter, which is included as an enclosure to this memorandum). If this information is not provided, EPA will assume constant, linear nutrient and sediment reductions between 2009, 2017 and 2025, and will assess 2-year milestone commitments and progress accordingly. Therefore, if jurisdictions are engaging in upfront program-building activities that do not result in near-term implementation and pollution reductions and do not specify this in their Phase I WIP, EPA would find load reductions associated with 2-year milestones to be insufficient and may consider adopting federal backstop actions.

Reporting and Assessment of 2-Year Milestones

As stated in EPA's November 4 and December 29, 2009 letters to the PSC and the April 2, 2010 *Guide for EPA's Evaluation of Phase I Watershed Implementation Plans*, EPA expects jurisdictions to develop detailed 2-year milestone commitments prior to the start of each 2-year milestone period. These commitments are expected to be **consistent with** the load reduction schedule described in the WIP. Milestone commitments should **include an input deck** with the number, location and type of nutrient and sediment controls that will be implemented within the 2-year period. EPA will use Scenario Builder and Watershed Model to assess the load reductions associated with these near-term implementation commitments.

The milestone commitments should also include capacity-building actions underway in the 2-year period, such as rulemakings. Although capacity-building actions may not result in on-the-ground implementation within the 2-year milestone period, the Agency expects jurisdictions to include this information to demonstrate assurance that future nutrient and sediment controls resulting from these actions will occur on schedule. For example, a jurisdiction may commit to develop legislation to restrict lawn fertilizer use in the 2012-2013 milestone period. The jurisdiction will report the acres receiving urban nutrient management and EPA will model the nutrient and sediment reductions resulting from this legislation when it becomes effective and can be verified in the 2014-2015 milestone period.

EPA expects jurisdictions to annually report the nutrient and sediment controls that were implemented. At the end of the 2-year milestone period, EPA will simulate the reduction in nutrient and sediment loads delivered from the jurisdiction to the Bay based on

practices reported jurisdictions in the past 2 years. If jurisdictions implement nutrient and sediment controls that differ from the upfront 2-year milestone commitments but these controls result in the same or greater nutrient and sediment reductions, EPA does not expect to adopt federal backstop actions. However, if nutrient and sediment reductions are less than the 2-year milestone commitment and the schedule identified in the WIP, EPA reserves its authority to carry out appropriate federal actions in that jurisdiction as identified in EPA's December 29, 2009 letter. EPA may consider the reasons as well as the degree to which jurisdictions did not fulfill their milestone commitments when determining whether to adopt federal actions. Similar to the upfront milestone commitments, EPA expects the 2-year milestone report to include whether capacity-building actions were implemented. If jurisdictions do not implement these actions or contingencies, they could be subject to federal backstop actions

Exchange of Allocations across Nutrients and/or Major Basins

As discussed at the PSC meeting, Jon Capacasa emailed the WIP and TMDL contacts on October 15 that EPA will consider modifications to the July 1 and August 13 nutrient and sediment allocations based on nitrogen to phosphorous exchanges or exchanges across major basins if requests were submitted by Friday, October 22. EPA cannot commit to accept proposed exchanges submitted after October 22 since sufficient time is required to evaluate them for their water quality impacts.

5% Temporary Reserve

EPA Regional Administrator Shawn Garvin announced a temporary reserve of 5% when he communicated the major basin and jurisdiction nutrient allocations to the PSC on July 1, 2010. This is a separate WIP planning tool; it is not a margin of safety applied to the TMDL itself; the Chesapeake Bay TMDL includes an implicit margin of safety for nutrients and an explicit margin of safety for sediment.

The July 1 letter explained that EPA expects jurisdictions to include in their WIP narrative contingency actions that they could take if an additional 5% reduction in nutrient loads is necessary to meet any allocation changes resulting from two updates to the Watershed Model planned in 2011. EPA does not expect jurisdictions to include contingencies to meet the temporary reserve in their WIP input decks. Likewise, the final TMDL nutrient allocations will be based on the full allocations announced in July (pending any exchanges as described in the first section), and will not be decreased by a 5% temporary reserve. EPA will not apply backstop allocations to meet the temporary reserve.

EPA will evaluate whether the final Phase I WIPs include sufficient contingency actions in the event that:

- Primary strategies do not result in predicted load reductions; and/or
- Additional implementation is necessary to meet more stringent allocations resulting from Watershed Model updates.

November 12 Deadline

As stated during a PSC presentation on the Phase I WIP and TMDL, EPA has established a deadline of November 12 for the receipt of input decks and redrafts of WIP chapters or sections to avoid surprises after WIP submissions on November 29. The November 12 deadline is the last opportunity for a jurisdiction to see the Scenario Builder and Watershed Model results associated with its input deck prior to November 29. EPA will review and provide feedback on the November 12 draft chapters and section submissions in order to resolve any outstanding concerns or questions (particularly those related to ensuring adequate reasonable assurance) prior to the November 29 final submission. This review will be coordinated by your State WIP Lead at EPA. Since there is little time for back and forth discussions after the November 29 submission, this process will help ensure that the results of final WIP model run, EPA's WIP evaluation, or the final TMDL allocations present no surprises to any jurisdiction.

ENCLOSURE

Figure 1. Basinwide Interim and Final Nitrogen Targets with Alternative Reduction Schedules

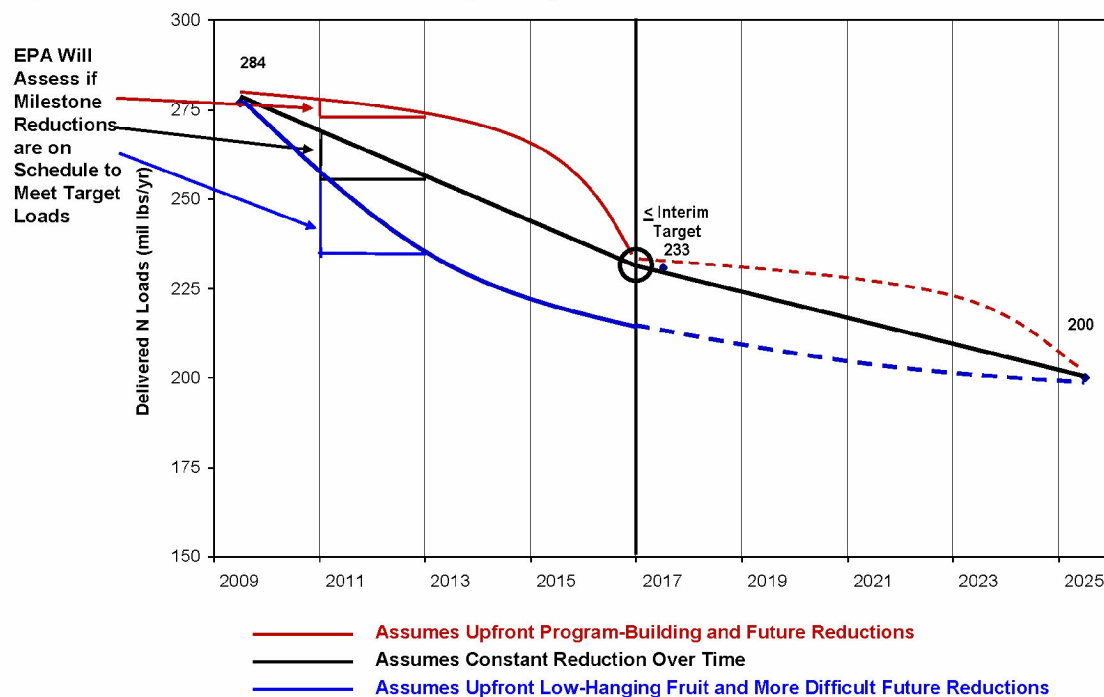
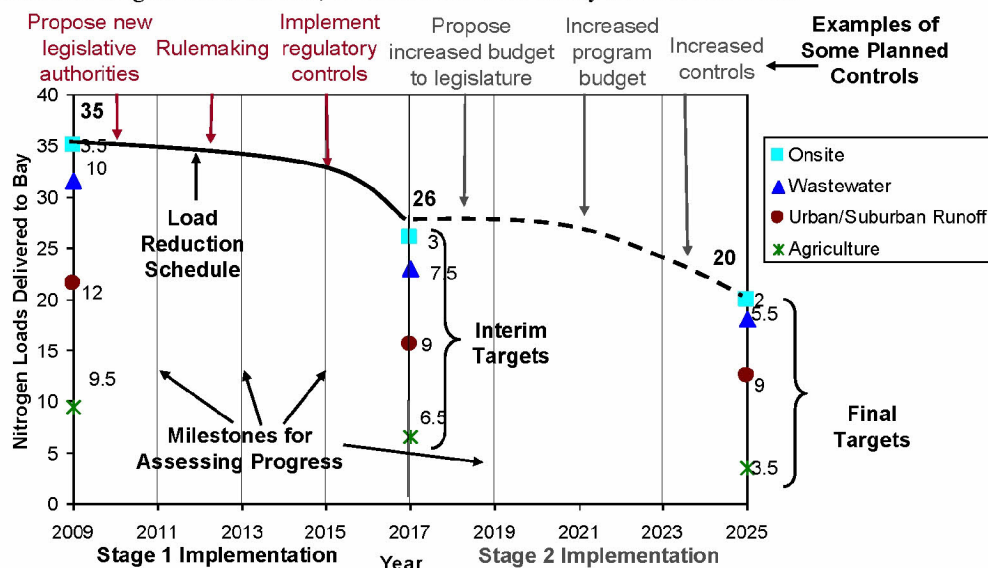


Figure 2. Reduction Targets and Schedule, with Identification of Key Actions and Dates



- Also divide jurisdiction load by 303(d) segment drainage area and, by November 2011, local area
- Attain major basin/jurisdiction load reductions by the interim target, or justify why can still meet final target
- Jurisdiction would determine desired 2-year schedule to meet interim and final target loads
- EPA first evaluates milestones based on consistency with jurisdiction target load. EPA accepts shifts among source sectors, basins, segment drainages, and local areas if jurisdiction target load is met and local and Bay water quality goals are achieved

Source: U.S. EPA (2009), Letter from Acting Regional Administrator to the PSC, November 4, pp 23, 28.